IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3689 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINJI @ PANNAJI SHANKARJI THAKORE OF AATHAMNO

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3689 of 2001

MR ANIL VARMA for MR MM TIRMIZI for Petitioner No. 1

MR K.T.DAVE, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), District Magistrate, Mehsana, vide order dated April 16, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a bootlegger within the meaning of Section 2(b) of the Act as three cases under the Prohibition Act are registered against the petitioner which are pending trial/investigation and statements of four anonymous witnesses are recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and, therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing the identity of those witnesses and detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Anil Varma, learned advocate for the petitioner has restricted his arguments on the aspect of delay in recording the order of detention without giving satisfactory explanation on the part of the detaining authority and, therefore, according to him, the order of detention is vitiated. Besides this, he has also contended that in the impugned order of detention, detaining authority has considered three cases registered against the petitioner under the Prohibition Act. In the said cases, the first case is registered on March 12, 1999, the second case is registered on December 25, 2000 and, last case is registered on January 13, 2001. So far as the first and second cases registered against the petitioner are concerned, they are of the year 1999 and 2000 respectively and, therefore, they are old cases and on the basis of those cases it cannot be said that the petitioner's activities are prejudicial to the maintenance of public order. So far as the last case registered against the petitioner/detenu is concerned, it is registered on January 13, 2001 and the order of detention came to be passed on April 16, 2001, that is after three months from the date of registration of the last offence. Therefore, according to the learned advocate for the petitioner, on account of delay which is not explained by the detaining authority, the order of detention is vitiated and on this ground alone, the petition deserves to be allowed.

5. Mr S.S.Patel, learned AGP has appeared on behalf of the respondent and has opposed the petition by making oral submissions. He, however, does not dispute the factual aspect that there is a delay of three months in passing the order of detention from the date of registration of the last offence against the petitioner/detenu. He, therefore, urged to pass appropriate order in light of the settled principles laid down by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. There is no manner of doubt that three offences are registered against the petitioner/detenu. The last offence is registered on January 13, 2001 whereas the impugned order of detention came to be passed on April 16, 2001. But prior to recording of the order of detention, detaining authority has recorded statements of four anonymous witnesses on April 16, 2001 upon which reliance is placed while passing the order of detention against the petitioner but no offence is registered against the petitioner on the basis of the said statements and, therefore, it is clear that the said statements are recorded with a view to fill up the gap between the date of registration of the last offence against the petitioner and the order of detention, which is about three months.

8. In the case of ANAND PRAKASH V. STATE OF UP, AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. A similar view is also expressed by this Court in the case of ELESH NANDUBHAI PATEL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997 (1) GLH 381.

10. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgements to the facts of the present case, it is clear that the present case is identical to the case referred to above. The last offence against the petitioner is recorded on January 13, 2001 which cannot be a proximate cause and therefore, unexplained delay makes the order of detention not proximate and vitiates the order of detention itself.

11. Besides this, the detaining authority has claimed the privilege under Section 9(2) of the Act by not disclosing the identities of those anonymous witnesses whose statements are recorded in an unregistered cases. It may be noted that the detaining authority has not filed any affidavit in reply and, therefore, I am of the opinion that the privilege claimed by the detaining authority cannot be called genuine in the absence of affidavit in reply and therefore, on the aforesaid two grounds, the order of detention stand vitiated and the petition deserves to be allowed by setting the petitioner at liberty forthwith.

12. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated April 16, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*